

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2195 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the Civil Judge? : NO

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F.B.PARMAR

Versus

STATE OF GUJARAT, NOTICE TO BE SERVED ON

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Appearance:

MR SV RAJU for Petitioner

MR SP HASURKAR for Respondent No. 1, 2, 3, 4

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CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 23/06/2000

ORAL JUDGEMENT

#. The petitioner who was appointed initially as work-charge Clerk (Scarcity Work) on purely temporary and ad hoc basis on 1.11.74 has approached this Court inter alia praying to issue a writ of mandamus or any other writ, order or direction, directing the respondents,

their officers, agents etc. to appoint the petitioner on regular basis as a Clerk with consequential benefits.

#. The petitioner has stated that he was appointed by a letter dated 1.11.74 by respondent no.3 - Taluka Development Officer as temporary Clerk (Scarcity Work). He worked for a period of about 7 months. Thereafter, Executive Committee of Vadgam Taluka Panchayat passed a resolution on 16.6.78, recommending that the petitioner be appointed as a Clerk who was already appointed as such. It is contended by the petitioner that the appointment as Work-charge was given for a short duration and on expiry of the period, he was again appointed. However, he has stated that he continuously served the Panchayat on the strength of such appointments repeatedly and as he was apprehending that his services are likely to be terminated, he has approached this Court with prayers as indicated hereinabove.

#. The learned Single Judge directed the Registry to issue notice on 21.4.86 with a direction to maintain status quo. The matter was adjourned from time to time and ultimately on 5.4.88, the learned Single Judge issued rule and by way of interim order, directed that the petitioner's services shall not be terminated by invoking the device of artificial break. The learned Single Judge, however, clarified that the respondents will be at liberty to terminate the services of the petitioner for any other legal reason. As usual, in this case, the respondents have not filed any reply till this date. Neither the State of Gujarat nor the District Development Officer nor the Taluka Development Officer thought it fit to file reply. The way in which the respondents are acting, it appears that the respondents - Taluka Development Officer and the District Development Officer are trying to support the cause of the petitioner by not filing the reply.

#. The petitioner by placing the material on record, initially tried successfully to create an impression that he was appointed for temporary period but continuously and that amounts to nothing but an exploitation. The petitioner pleaded that as he has continuously worked itself indicates that there is need of his services and therefore, the respondents must be directed to see that his services are not terminated except in accordance with law.

#. Under the provisions of the Gujarat Panchayats Act,

1961, Chapter XI refers to provisions relating to the services. Relevant portion of section 203 is reproduced which reads as under.

"203. (1) For the purpose of bringing about uniform scales of pay and uniform conditions of services for persons employed in the discharge of functions and duties of panchayats, there shall be constituted a Panchayat Services in connection with the affairs of panchayats. Such services shall be distinct from the State Service.

(2) The Panchayat Service shall consist of such classes, cadres and posts and the initial strength of officers and servants in each such class and cadre shall be such, as the State Government may by order from time to time determine:

Provided that nothing in this sub-section shall prevent a district Panchayat from altering, with previous approval of the State Government, any class, cadre or number of posts so determined by the State Government.

2(A)(a) The cadres referred to in-sub-section (2) may consist of district cadres, Taluka cadres and local cadres.

(b) A servant belonging to a district cadre shall be liable to be posted whether by promotion or transfer to any post in any Taluka in the district.

(c) servant belonging to a Taluka cadre shall be liable to be posted whether by promotion or transfer to any post in the same gram or nagar in the same Taluka.

(d) A servant belonging to a local cadre shall be liable to be posted whether by promotion or transfer to any post in the same gram or, as the case may be, nagar.

2(B) In addition to the posts in the cadres referred to in sub-section 2(A), a Panchayat may have such other posts of such classes as the State Government may by general or special order determine. Such posts shall be called

"deputation posts" and shall be filled in accordance with the provisions of section 207."

So far as the expenditure towards allowance etc. of officers in Panchayat Service is concerned, section 204 provides that the same is to be met by Panchayat from its own funds. So far as the Taluka Development Officer is concerned, it is provided under sub-section (2)(c) of section 123 of the Panchayat Act that the Taluka Development Officer shall make appointments of persons in accordance with the rules. It is in view of this that one will have to refer to the rules. The State Government, in exercise of the powers conferred by section 323 of the Gujarat Panchayats Act, 1967, made the rules known as Gujarat Panchayat Service selection Board (Functions) Rules, 1964 and Gujarat District Panchayat Service Selection Committee (Functions) Rules, 1964. Keeping these aspects in mind, one will have to refer to annexures annexed to the petition. It appears that without following the procedure contemplated under the Rules and the Act, the petitioner was appointed as Work-charge Clerk (Scarcity work). After the scarcity being over, there was no reason whatsoever for the Panchayat to continue the petitioner. The Panchayat was aware that a sanction is required for appointing a person even as a Work-charge Clerk. The resolution dated 29.5.82 placed on record as Annexure : E refers that the amount of salary was to be met with by the Panchayat from its own funds and request was made to the Development Commissioner to sanction the appointment. There are documents at pages 25, 27 etc. indicating that the amount shall be paid from the Panchayat funds. A meeting was held on 27.4.81 wherein a resolution was passed. Reading the same, it is clear that, the petitioner was given appointment as Work-charge (Intelligence) and his services were satisfactory and therefore, under the provisions contained in Bombay Civil Services Rules, vide rule 306, he was appointed as such for a period of 29 days in anticipation that the same will be sanctioned by the Committee every month. Thus, it was known to the petitioner from the very beginning that he is not appointed on a sanctioned post. Without sanction for the reasons best known to the Panchayat appointment was made. Panchayat is not joined as a respondent.

#. The government vide Annexure :K on 4.7.73 issued a circular stating that in the Department of Roads and Buildings, persons were appointed who were known as nominal muster roll /as daily wagers. It was decided

that in future if the persons are to be appointed then, they should be given preference if they are otherwise fulfilling the criteria. It was specifically pointed out that the persons are required to be employed through Employment Exchange. One thing is certain that this resolution is made applicable to the Department of Roads & Buildings where on account of need of work, the department was required to appoint persons at several places considering the need of the work. There is no reference to appointment of a person on a nominal muster roll in the Panchayat or Work-charge in the Panchayat.

#. In public services when the persons are to be appointed, it becomes the duty of the appointing authority to invite applications from the public at large so that the persons who are eligible and qualified may compete with each other. The law also provides for calling names from the Employment Exchange. Recruitment to the government services is required to be made on the basis of the recommendations from the Employment Exchange and Social Welfare Department. In the case of *Dinesh S. Parmar v. State of Gujarat*, reported in 33(1) GLR 608, the learned Single Judge of this Court had an occasion to consider the similar facts. In 1981, a peon was appointed on purely temporary basis for a period of 29 days in the pay scale of Rs. 196/- and other admissible allowances in accordance with law. It was specifically mentioned that "the said appointment is purely temporary and that his services are liable to be terminated without issuing any notice". Further it may be noted that in the instant case also, there was the same condition in the appointment order. The petitioner accepted the said appointment and joined the service. Thereafter, various orders came to be passed for 29 days' appointment. On the apprehension that his services would to be terminated, he approached this Court by filing this petition. The learned Single Judge considered the decision of the Apex Court in the case of *Delhi Development Horticulture Employees Union v. Delhi Administration, Delhi & Ors.*, reported in 1992 (1) JT 394. In para 5 of the judgment, the observations made by the Apex Court are reproduced. The learned Single Judge also considered the case of *State of Punjab & Ors. v. Surinder Kumar & Ors.*, reported in 1992 (1) SCC 489. In para 7, the learned Single Judge pointed out as under.

"In my judgment, whenever an irregularly appointed applicant or petitioner approaches a High Court, by invoking the extra-ordinary jurisdiction under Art. 226 of the Constitution,

the court should always remember that his initial appointment was irregular and his entry was a back door entry. In dealing with such a situation, the Court must keep in mind, inter alia the considerations which are 13 in numbers."

The learned Single Judge pointed out that the list is merely illustrative and no means is to be treated as exhaustive.

#. Mr. Pandya, learned Advocate appearing for the petitioner submitted that it is not the petitioner's fault. The person who gets back door entry would always come with such a plea. What is more interesting in this matter is that the petitioner has not joined the Panchayat which passed a resolution and appointed the petitioner. The Taluka Development Officer merely carried out the resolution passed by the Panchayat. It was known to the petitioner that the appointment is in fact made by the Panchayat. It was also known to the petitioner the amount of salary was to be paid from the funds of the Panchayat. Therefore, it was absolutely necessary for the petitioner if he wanted a relief in the matter, he should have joined the Panchayat as party respondent. Having not done so, at the fag end, he cannot request the Court to permit him to join the Panchayat as a party and to see that the matter is delayed for certain number of years. He cannot take advantage of interim relief in a fashion like this. I had an occasion to consider the appointments made in similar fashion in Special Civil Application No. 4187/86 what was the authority of the Taluka Development Officer to appoint a person? For this, one has to refer to the rules made under the Act. Mr. Pandya could not point out from the rules that the Taluka Development Officer was authorized to appoint the petitioner on Work-charge basis and in view of these facts, the petition must be dismissed. Interim relief stands vacated. Rule is discharged.

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